

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

BECKLEY DIVISION

JAMES C. LESTER,

Petitioner,

v.

CIVIL ACTION NO. 5:14-cv-10134

WARDEN DAVID JONES,

Respondent.

MEMORANDUM OPINION AND ORDER

On February 14, 2014, the Petitioner, acting *pro se*, filed a Petition Under 28 U.S.C. § 2254 for a Writ of *Habeas Corpus* by a Person in State Custody (Document 1). On February 27, 2014, the Petitioner filed a Supplement to his Section 2254 Petition (Document 5).

By *Standing Order* (Document 4) entered on February 26, 2014, this matter was referred to the Honorable R. Clarke VanDervort, United States Magistrate Judge, for submission to this Court of proposed findings of fact and recommendation for disposition, pursuant to 28 U.S.C. § 636. Subsequently, by *Order* (Document 13) entered on January 6, 2016, the case was referred to the Honorable Omar J. Aboulhosn, United States Magistrate Judge, for submission of proposed findings of fact and recommendation for disposition.

On February 23, 2016, Magistrate Judge Aboulhosn submitted a *Proposed Findings and Recommendation* (Document 15) wherein it is recommended that the Court dismiss the Petitioner's Petition Under 28 U.S.C. § 2254 for a Writ of *Habeas Corpus* by a Person in State Custody and Supplemental Petition (Documents 1 & 5) and remove this matter from the Court's docket.


As referenced in the *Proposed Findings and Recommendation*, the docket reflects that the Clerk's Office was notified on June 24, 2015, that the Petitioner is now deceased. (Document 12). As noted by Magistrate Judge Aboulhosn, a family member or personal representative may file objections to the *Proposed Findings and Recommendation*. Any such objections to the Magistrate Judge's *Proposed Findings and Recommendation* were due by March 11, 2016.

Neither party has timely filed objections to the Magistrate Judge's *Proposed Findings and Recommendation*. The Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985). Failure to file timely objections constitutes a waiver of *de novo* review and the Petitioner's right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); *see also Snyder v. Ridenour*, 889 F.2d 1363, 1366 (4th Cir. 1989); *United States v. Schronce*, 727 F.2d 91, 94 (4th Cir. 1984).

Accordingly, the Court **ADOPTS** and incorporates herein the findings and recommendation of the Magistrate Judge as contained in the *Proposed Findings and Recommendation*, and **ORDERS** that the Petitioner's Petition Under 28 U.S.C. § 2254 for a Writ of *Habeas Corpus* by a Person in State Custody and Supplemental Petition (Documents 1 & 5) be **DISMISSED** and that this matter be **REMOVED** from the Court's docket.

The Court **DIRECTS** the Clerk to send a certified copy of this Order to Magistrate Judge Aboulhosn, counsel of record, and any unrepresented party.

ENTER: March 15, 2016


IRENE C. BERGER
UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF WEST VIRGINIA